

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DOUGLAS A. DUNN, #1002086

§

VS.

§

CIVIL ACTION NO. 4:10cv571

DIRECTOR, TDCJ-ID

§

ORDER

Petitioner filed a motion for certificate of appealability (docket entry #30) in his appeal from this Court's dismissal of his petition for habeas corpus.

A petitioner must obtain a certificate of appealability before he can appeal a district court's decision. 28 U.S.C. § 2253(c)(1). A certificate of appealability may issue only if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The Supreme Court fully explained the requirement associated with a "substantial showing of the denial of a constitutional right" in *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604, 146 L. Ed.2d 542 (2000). In cases where a district court rejects a petitioner's constitutional claims on the merits, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.*; *Henry v. Cockrell*, 327 F.3d 429, 431 (5th Cir. 2003). "When a district court denies a habeas petition on procedural grounds without reaching the petitioner's underlying constitutional claim, a COA should issue when the petitioner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* The Supreme Court has held that a certificate of appealability is a "jurisdictional prerequisite" and a court of appeals lacks jurisdiction to rule on the merits until a certificate of appealability has been issued. *Miller-*

El v. Cockrell, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039, 154 L. Ed.2d 931 (2003).

Petitioner's petition was dismissed because it was not timely filed. He has not shown that the decision dismissing his writ was wrong. Accordingly, he is not entitled to a certificate of appealability.

Petitioner also filed a motion for leave to appeal *in forma pauperis* (docket entry #31). Because Petitioner has not shown entitlement to a certificate of appealability, he also has not shown that he is entitled to proceed *in forma pauperis* on appeal. *United States v. Delario*, 120 F.3d 580, 582-83 (5th Cir. 1997). Furthermore, a review of his *in forma pauperis* data sheet reveals that Petitioner's 6-month average deposits are 97.50 per month. For this additional reason, he is not entitled to proceed *in forma pauperis* on appeal. It is accordingly

ORDERED that the motion for a certificate of appealability (docket entry #30) is **DENIED**. It is further

ORDERED that the motion to proceed *in forma pauperis* on appeal (docket entry #31) is **DENIED**. All motions not previously ruled upon are **DENIED**. Petitioner should submit all future motions to the Fifth Circuit as opposed to this Court.

SIGNED this 2nd day of March, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE